IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/03/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

Writ Petition No.12356 of 2003

K.Ravichandran ... Petitioner

-Vs-

Metropolitan Transport Corporation Ltd.,
rep.by its Chairman cum Managing Director
Chennai Division-I, Pallavan Salai,
Chennai-600 002. ... Respondent

Prayer: Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus.

For Petitioner : Mr.V.Prakash

For Respondent : Mr.V.R.Kamalanathan

:O R D E R

By the proceedings dated 4.12.2000, the petitioner was removed from the services as driver in the respondent Corporation, as he was invalidated on medical grounds and found not suitable for the post of Heavy Passenger Vehicle Driver and he was relieved from duty with immediate effect. Aggrieved by the same, the petitioner preferred the above writ petition seeking a writ of Certiorarified Mandamus to call for the records in connection with order of discharge of the petitioner from service bearing Ref. Proc. No. 3211/ P.P.Ni.2/Ma.Po.Ka.1/2000 dated 04.12.2000 and quash the same and direct the respondent to reinstate the petitioner in service with continuity of service in a suitable alternate job protecting his pay and service conditions and also pay him all the backwages from the date of reinstatement.

2. The above writ petition was admitted by this Court on 23.4.2003.

3. Placing reliance on Section 47 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985 (hereinafter referred to 'the Act') and the decisions of the Apex Court in (i) Kunal Singh .vs. Union of India [2003 (2) Supreme 10 2]and (ii) Narendra Kumar Chandla .vs. State of Haryana [JT 1994(2) S.C.94] and that of this Court in (i) Order dated 13.12.1999 made in W.P.No.13408 of 1999 (ii)Order

dated 11.8.2003 made in W.P.No.40270 of 2002 and (iii) Order dated 16.3.2004 made in W.P.No.8214 of 1999, the learned counsel for the petitioner submits that the impugned order invalidating the petitioner on medical grounds and discharging him from service, is liable to be set aside and consequently contends that the petitioner is entitled to be reinstated with continuity of service in a suitable alternative job, protecting his pay and service conditions with backwages till he is reinstated in service.

4. Per contra, learned counsel for the respondent transport Corporation, inviting my attention to the fact that the petitioner is suffering from 'disc prolapse', submits that the petitioner did not sustain the said disability either due to the employment or during the course of the employment in the respondent Corporation and, therefore, the petitioner is not entitled to the benefit under Section 47 of the Act.

5. I have given careful consideration to the submissions of the learned counsel on both sides.

6. In this regard, it is apt to refer to Section 47 and 72 of the Act, which reads as follows.

"Section 47: Non-discrimination in Government employments- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;
Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.
Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.
(3) No promotion shall be denied to a person merely on the ground of his disability:
Provided that the appropriate Government may, having regard to the type of work carried on in any establishment by notification and subject to such conditions, if any, as ay be specified in such notification exempt any establishment from the provisions of this section."

Section 72: Act to be in addition to and not in derogation of any other law- The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities."

(emphasis supplied)

7. The Apex Court, in 'Narendra Kumar Chandla .vs. State of Haryana [JT 1994(2) S.C.94]', held as follows,

"Article 21 protects the right to livelihood as an integral facet of right to

life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties."

.....

"An employee cannot be thrown out and that the employee has to be given light duty of alternate duty, which may suit his health conditions and that he should be given pay protection also."

8. Again the Apex Court in Kunal Singh .vs. Union of India [2003 (2) Supreme 102], interpreting Sections 47 and 72 of the Act, held as follows,

"9.Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of 'disability' and 'person with disability'. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall disposense with, or reduce in rank, an employee who acquires a disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this, no promotion shall be denied to a person merely on the ground of his disability as is evidennt from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain statutory obligation on the employer to protect an employee acquiring disability during service.

10. The argument of the learned counsel for the respondent on the basis of definition given in Section 2(t) of the Act that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who had acquired 'disability' within the meaning of Section 2(i) of the Act and not a person with disability.

11. We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS Pensions Rules. The Act is a special Legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules canot override Section 47 of the Act. Further Section 72 of the Act also supports the case of the appellant, which reads:-

Section 72: Act to be in addition to and not in derogation of any other law- The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities."

(Emphasis supplied)

9. Following the above decisions of the Apex Court, this Court also granted relief to the employees who suffered disability by reinstating them in suitable alternative post, by orders dated 13.12.1999 made in W.P.No.13408 of 1999, 11.8.2003 made in W.P.No.40270 of 2002 and 1 6.3.2004 made in W.P.No.8214 of 1999.

10. It is a trite law that the disabled employee is entitled to be posted in the same scale of pay and service benefits and if it is not possible to adjust the employee against that post, he must be kept on supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier, and that no promotion shall be denied to the person merely on the ground that he was disabled.

11. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985 is a social welfare legislation and the benefit of the same shall not be denied to the disabled persons, which is in addition to and not in derogation of any other law as declared under Section 72 of the Act. The intention of the enactment of the Act is based on the need for a comprehensive legislation for safeguarding the rights of persons with disabilities and enabling them to enjoy equal opportunities and to help them to fully participate in national life.

12. Concededly, in the instant case, the petitioner was terminated from service only due to invalidation on medical grounds, but not for any other reason, nor there is any charge against him.

13. The only contention made on behalf of the respondent Corporation is that the disability suffered by the petitioner is not 'due to the employment' nor 'during the course of employment' and therefore, he is not entitled for the benefit of Section 47 of the Act. A reference to Section 47 of the Act in this regard, of course with the risk of repitition, is inevitable, wherein it is provided that 'No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service'. The words 'during his service' only means that the service of an employee who

suffers any disability during his service, cannot be dispensed with by the establishment; but it would not mean that the employee who seeks the benefit of Section 47, should suffer disability due to the employment or during the course of employment, as contented by the learned counsel for the respondent.

14. In the absence of any words such as 'due to the employment or during the course of the employment' under Section 47 of the Act, the argument advanced by the learned counsel for the respondent Corporation that the petitioner/employee would be entitled for the benefit of Section 47 of the Act, only if he acquires the disability 'due to the employment' or 'during the course of employment', is liable to be rejected outright. It is trite law that the object of interpreting a statute or any statutory provision is to ascertain the intention of the legislature or the authority enacting it. The intention of the maker is primarily to be gathered from the language used, which means that attention should be paid to what has been sa id as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of a doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. Hence, it is immaterial whether the employee acquires the disability either 'due to the employment' or 'during the course of employment', but suffice it that the employee acquires disability during his service, for claiming the benefit under Section 47 of the Act.

15. The words 'an employee who acquires a disability during his service' in Section 47 of the Act, would mean that (i) the employee did not suffer any disability before entering into the service (ii) the employee acquired disability after he entered into the service and (iii) the employee acquired disability after he entered in the service and before he retires from service,i.e., during his service, nothing more or nothing less.

16. I am, therefore, of the considered opinion that the petitioner is entitled for any suitable post with the same scale of pay and service benefits and if it is not possible to accommodate the petitioner in any such post, he is entitled to be kept on a supernumerary post, till a suitable post is available or he attains the age of superannuation, whichever is earlier, as contemplated under section 47 of the Act.

17. However, the petitioner is not entitled for the backwages from the date of the impugned order, as he had chosen to challenge the impugned order dated 4.12.2000 only in the year 2003 and there is no convincing explanation for the laches in approaching the Court, challenging the proceedings dated 4.12.2000 in April 2003.

18. For the reasons stated above, I am inclined to pass the following order.
i.The impugned proceedings dated 4.12.2000 stands quashed.

ii.The respondents are directed to pass appropriate orders, within thirty days from the date of receipt of a copy of this order, reinstating the petitioner in a suitable alternate post with the same scale of pay and service benefits, with continuity of service.

iii.The respondent Corporation shall pay 25% of the backwages for the period from 23.4.2003 (when the writ petition was admitted) till the order of reinstatement is made.
iv.The writ petition is ordered accordingly. No costs.

Index:Yes
Internet:Yes

KST.

To:

Metropolitan Transport Corporation Ltd.,
rep.by its Chairman cum Managing Director
Chennai Division-I, Pallavan Salai,
Chennai-600 002.